

MCG2PLA1

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
3 -----x

4 In re:

5 PLATINUM-BEECHWOOD LITIGATION 18 Civ. 06658 (JSR)

6 MARTIN TROTT and CHRISTOPHER 18 Civ. 10936 (JSR)
7 SMITH, as Joint Official
8 Liquidators and Foreign
9 Representatives of PLATINUM
PARTNERS VALUE ARBITRAGE FUND LP
(in Official Liquidation) and
PLATINUM PARTNERS VALUE ARBITRAGE
FUND LP (in Official Liquidation)

10 Plaintiffs,

11 v.

12 PLATINUM MANAGEMENT (NY) LLC,
13 et al.,

14 Defendants.

15 -----x Trial

16
17 New York, N.Y.

18 December 16, 2022
19
20 Before:
21 HON. JED S. RAKOFF,
22 District Judge
23 and a Jury
24
25

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1 APPEARANCES

2 HOLLAND & KNIGHT, LLP
3 Attorneys for Plaintiffs
4 BY: WARREN E. GLUCK
5 MARTIN L. SEIDEL
6 RICHARD A. BIXTER JR.
7 QIAN (SHEILA) SHEN
8 NOAH W.S. PARSON
9 ELLIOT A. MAGRUDER10 KATTEN MUCHIN ROSENMAN, LLP
11 Attorneys for Defendant Bodner
12 BY: ELIOT LAUER
13 GABRIEL HERTZBERG
14 JULIA B. MOSSE15 CURTIS, MALLET-PREVOST, COLT & MOSLE, LLP
16 Attorneys for Defendant Bodner
17 BY: NATHANIEL C. AMENT-STONE
18 ALLESANDRA TYLER

19 Also Present:

20 Michael Robson, Paradocs Motion Support
21 Esterah Brown, Paralegal, Curtis Mallet
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1 (Trial resumed; jury not present; 9:50 a.m)

2 THE DEPUTY CLERK: December 16, 2022, the continuation
3 of Platinum Beechwood.

4 THE COURT: Good morning. Please be seated.

5 We have two more notes from our hard-working jury.

6 Juror note 6 simply says that the jury foreperson is Mary Jane
7 "Janie" Yorns, Y-O-R-N-S. That is, I believe, Juror No. 4.

8 But more substantively, juror note 7 says, "Can you
9 tell us what exhibit has the valuation chart that shows
10 encumbrances and unencumbered numbers."

11 So what is the answer?

12 MR. GLUCK: It's the PowerPoint. We think we have it.

13 MS. SHEN: It is PX 590.

14 THE COURT: Do we have a hard copy?

15 MS. SHEN: It is in the binder.

16 THE COURT: 590.

17 MR. AMENT-STONE: We agree, your Honor.

18 MR. GLUCK: We will get the Court a page number. It's
19 about 20.

20 MS. SHEN: PowerPoint slide 6 in the --

21 THE COURT: Within 590?

22 MS. SHEN: Yes.

23 THE COURT: I think the easiest way to do this is just
24 to endorse a copy of note 7 at the bottom. I will just say it
25 is PowerPoint 6 on -- it's a plaintiffs' exhibit?

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1 MS. SHEN: It is a plaintiffs' exhibit, yes. I
2 believe it is page 6.

3 MR. LAUER: No.

4 MR. AMENT-STONE: It says Bates nine, but it is --

5 THE COURT: What exhibit is it?

6 THE DEPUTY CLERK: One at a time.

7 THE COURT: Plaintiffs'? Defendant's? Joint?

8 MS. SHEN: Plaintiff.

9 MR. AMENT-STONE: And your Honor, we believe the Bates
10 number for this page is CTRL--

11 THE COURT: Hold on. So it's Power Point 6, on
12 Plaintiffs' Exhibit 590, and Bates no.

13 MR. AMENT-STONE: CTRL800889 --

14 THE COURT: So control is -- how are they going to see
15 it? C-T-R-L.

16 MR. AMENT-STONE: Yes, CTRL, your Honor.

17 THE COURT: CTRL. Go ahead.

18 MR. AMENT-STONE: 8008.

19 THE COURT: No, no, slower. 800.

20 MR. AMENT-STONE: You have got 8008 and then 894.

21 THE COURT: This is separated?

22 MR. AMENT-STONE: No. It continues.

23 THE COURT: One long number. 8008894.

24 MR. AMENT-STONE: Underscore and then three zeros,
25 0009. I believe that's the right one.

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1 THE COURT: Okay. So I have just put at the bottom of
2 a copy of juror note 7 the notation, "It is Power Point 6 in
3 Plaintiffs' Exhibit 590, Bates number CTRL8008894_0009," and I
4 have signed it "Judge Rakoff." So my courtroom deputy will
5 take that right in to the jury.

6 Okay. It looks to me like the number of notes will
7 soon equal the number of exhibits, but in any event, stay tuned
8 and we will see what happens.

9 (Recess pending verdict)

10 (Jury not present; 2:18 p.m.)

11 THE COURT: We have received two more notes. The
12 first note, which we have marked as jury note 8 says, "Was
13 PX 924 submitted into evidence?" I can't help but say I told
14 you they would send a note. Nevertheless, as we established
15 yesterday, it was not admitted into evidence.

16 The second note says, "Can we get Quintero's
17 testimony—the cross-examination? One copy is all that's
18 needed or get a readback, whichever is faster."

19 So do we have a copy?

20 MS. SHEN: We do, your Honor.

21 THE COURT: Do you want to hand it up? Both sides
22 agree on this copy?

23 MR. HERTZBERG: We do, Judge.

24 THE COURT: So for the record this is pages 1576
25 through 1622.

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1 MS. SHEN: It should be through 1667.

2 THE COURT: I only have -- wait a minute. I see. I
3 am shocked to report that you put one page out of order.

4 MS. SHEN: Oh, I'm sorry about that.

5 MR. HERTZBERG: Call the marshals, Judge.

6 THE COURT: Let me make sure all of the pages are in
7 order now.

8 Let me hand it quickly back to plaintiffs' counsel.

9 Why don't you quickly look at it while we sit here, make sure
10 all the pages are in proper order.

11 THE DEPUTY CLERK: And there are no sidebars?

12 MS. SHEN: There were no sidebars.

13 THE DEPUTY CLERK: Okay, great.

14 THE COURT: While Ms. Shen is doing that, I propose to
15 send with the jury those pages along with the following note:

16 "To the jury: In answer to your most recent notes,
17 PX 924 was not received in evidence, as it was simply an aid to
18 your following Mr. Quintero's testimony. Attached is a single
19 copy of the cross-examination testimony of Mr. Quintero."

20 Any problems with that?

21 MR. HERTZBERG: No.

22 MR. GLUCK: No.

23 THE COURT: Very good. So as soon as we get that -- I
24 will give this to my -- I don't think that we need to mark this
25 as a court exhibit because it is not substantive. As soon as

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1 we get those pages, we can take that right in to the jury.

2 Okay.

3 MR. GLUCK: Sorry. Did the Court want to take the
4 issue up that we discussed yesterday that the Court just
5 referenced?

6 THE COURT: I'm sorry.

7 MR. GLUCK: Did the Court wish to take the issue up
8 that we discussed yesterday in relation to 924 that while it
9 wasn't admitted into evidence --

10 THE COURT: Well --

11 MR. LAUER: -- but whether the jury can --

12 THE COURT: -- had they asked -- well, we will see
13 what they say in response to my note. If they come back and
14 say we would still like to see it, we will take up that issue,
15 but I don't think it is something that I should be
16 affirmatively offering.

17 MR. GLUCK: Understood.

18 THE COURT: All right. So how are we coming on those?

19 MR. GLUCK: Sheila is making sure that transcript is
20 correct.

21 THE COURT: As soon as she comes back, my courtroom
22 deputy will take the pages and my cover note in to the jury.

23 (Recess pending verdict)

24 (Jury not present; 2:25 p.m.)

25 THE COURT: Are we ready with the testimony?

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1 MR. GLUCK: We are not. We need to confirm something
2 because we both realized something. Five minutes.

3 THE COURT: I really think we need to -- the whole
4 reason they said they would be happy with just one copy was so
5 that they could get it quickly.

6 In the meantime, we have another note we have not yet
7 marked, but I think we are up to 10.

8 THE DEPUTY CLERK: Yes.

9 THE COURT: It says, "Can we get Michael Katz's
10 deposition." Now, I think that was actually -- there was one
11 deposition that a transcript was put in as an exhibit, so they
12 may have it without realizing it.

13 MR. HERTZBERG: My recollection is that it was read
14 aloud with Mr. Gluck on the stand and the court reporter took
15 it down as if it were live testimony.

16 THE COURT: That's the normal thing. But there was
17 one deposition, maybe it was somebody else.

18 MR. HERTZBERG: I think what the Court is thinking of
19 is when we played the video deposition.

20 THE COURT: Yes. Thank you very much. What we need
21 to do is get the pages from the court reporter of Mr. Katz's
22 deposition.

23 As soon as you finish with the earlier testimony, I
24 really want to get that in right away, and then I will come up
25 when you are ready on the Katz deposition.

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1 (Recess pending verdict)

2 (Jury not present; 2:40 p.m.)

3 THE COURT: Please be seated.

4 Do we have the Katz deposition?

5 MS. SHEN: (Handing).

6 THE COURT: This is pages 1059 through 1104. So I am
7 just going to put at the very top the words "Katz
8 Deposition"—I don't think we need more of a cover note than
9 that—and ask my courtroom deputy to take it in right now.

10 Good. All right. Stay tuned.

11 (Recess pending verdict)

12 (Jury not present; 4:15 p.m.)

13 THE COURT: For the lawyers in the case involving the
14 deliberating jury, we have two notes. The first one is that
15 they are staying until 4:30, and the second one is that they
16 want one copy of Mr. Bodner's testimony, so see what you can
17 do. The court reporter obviously is occupied otherwise, but
18 see what you can do to put that together from the transcripts
19 that you have.

20 MR. HERTZBERG: We will take care of it, Judge. Thank
21 you.

22 THE COURT: And you may want to go outside, if
23 necessary, so you are not disturbing this proceeding.

24 (Recess pending verdict)

25 (Jury not present; time noted, 4:32 p.m.)

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1 THE COURT: All right. There is a matter, counsel,
2 that we are going to have to take up very shortly. I think
3 this matter can be completed in the next five minutes and then
4 we will take up your matter.

5 Linda, would you make sure that the jury remains here
6 for the next at least the next five minutes.

7 THE DEPUTY CLERK: All of them?

8 THE COURT: All of them.

9 (Pause)

10 THE DEPUTY CLERK: The only juror left is the author
11 of the note.

12 THE COURT: They left. Okay. That's okay. Tell him
13 to remain.

14 THE DEPUTY CLERK: He is.

15 (Recess)

16 (Jury not present; 4:38 p.m.)

17 THE COURT: So first we got a note that was already
18 read to you: "Can we get Mr. Bodner's testimony, one copy."
19 Where do you stand on that?

20 MR. GLUCK: They are printing.

21 MR. HERTZBERG: Ms. Shen -- and we may get an update
22 live. Ms. Shen, I understand, is printing the testimony.

23 THE COURT: Okay. So the jury has left.

24 The next note right after that was, "For your
25 interest, the jury is staying till 4:30," and then 4:30 came

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1 and they left, deprived of having received that testimony. But
2 what we will do is my courtroom deputy will leave it. Give it
3 to her as soon as it is ready and she will leave it on the
4 chair or the table, somewhere where it is obvious, with a
5 little note saying: Here is Mr. Bodner's testimony.

6 Now, the note that we have to deal with right now is
7 from Juror No. 5. It reads as follows: "Judge Rakoff. I
8 totally understand this process, but I'm definitely
9 experiencing a hardship at my job. It's been over two weeks
10 that I cannot do work that is time sensitive, and I have held
11 off as long as I can. I have done as much work that I can do
12 on my breaks and lunch, but I need several hours behind my
13 desk. I am asking that at this point if I can be excused from
14 the remaining deliberations."

15 So what is the position of counsel, starting with
16 plaintiffs' counsel? I should tell you before I hear from you
17 that since we have nine jurors, and only six are required. I
18 am strongly inclined to grant that request. But let me hear
19 what your position is, plaintiffs' counsel.

20 MR. GLUCK: I am just thinking, 30 seconds.

21 THE COURT: Yes.

22 (Pause)

23 MR. GLUCK: Can the juror be permitted to work for a
24 few hours Monday morning and then they will all come in by
25 Monday afternoon?

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1 THE COURT: You mean by excusing, he can't just come
2 in and come out, so you are saying excuse the entire jury for
3 several hours. That's a possibility.

4 What is defense counsel's position.

5 MR. HERTZBERG: That's a good solution, Judge, from
6 our perspective. We would rather that than lose Juror 5.

7 THE COURT: Let's see if that works. Let bring out
8 juror 5.

9 (Juror No. 5 present; 4:41 p.m.)

10 THE COURT: Just identify yourself for the record.

11 JUROR NO. 5: Anthony Riccobono.

12 THE COURT: So first I have a couple of questions for
13 you, but do not tell us anything about the deliberations. We
14 are not entitled to know.

15 JUROR NO. 5: Completely understand.

16 THE COURT: So I got your note. I read it to counsel,
17 who are all very sympathetic to your problem. I have been
18 watching you. You are a terrific juror. I notice how
19 attentive you have been. And I have even noticed you have a
20 good sense of humor, which is not always the case among jurors,
21 by which I mean you laughed at my jokes.

22 So here is what it really comes down to. Is there a
23 way we could have the jury as a whole sit for fewer hours on
24 Monday or whatever to give you time to take care of what you
25 need to do but without losing you from it. You made a huge

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1 sacrifice. Everyone here recognizes that. But we would really
2 hate to lose you if we don't have to.

3 JUROR NO. 5: I understand. Herein lies the problem.
4 So for the last two weeks, which I understand is my obligation
5 to be here, my work has suffered because I run a small
6 business. I just lost a sales rep, so I am taking on all his
7 duties, where it is very time sensitive. So I have orders
8 sitting on my desk for the last two weeks that I don't have the
9 time to do the paperwork and place it and know that the order
10 is going to go in, it's going to be correct. And it involves a
11 lot of money.

12 So I get up at 4:30 in the morning to get as many
13 e-mails and work done as I can in the morning and try and pawn
14 off as much work as I can to people who work for me, but then
15 once I get here, even though I have been able at lunchtime to
16 go down the street to 85 Worth Street, where I have a project
17 that's going on, which is right here, I was supposed to go
18 there today at 1:00, and I didn't realize I couldn't leave for
19 lunch. So, anyway, I had to cancel that, and I have to try and
20 get this done on Monday. And that's just one part of a pile
21 that's sitting on my desk and I can't pawn that off on anybody
22 else in my office to get done.

23 So it's really -- and then by the time I get home,
24 because I live in Westchester, it's 7:00 at night some nights,
25 and I spend an hour and a half doing e-mails, but I don't have

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1 the time or the energy at that point to sit down and go through
2 all my orders and do all my paperwork. So even if we were here
3 for half days on Monday until we were done, whenever that may
4 be, I still wouldn't be able to get the work done and produced
5 that I need to get done.

6 THE COURT: All right. Counsel come to the sidebar.

7 (At the sidebar)

8 THE COURT: So he really answered the question that we
9 had. He said even if they only sat a half day, he wouldn't be
10 able to get his work done and he's got a project that needs
11 work. It's nearby.

12 I'm still leaning towards excusing him, but let me
13 find out if either counsel objects.

14 (Pause)

15 MR. HERTZBERG: I'm letting you go first, in case it
16 is unclear.

17 THE COURT: I will tell you what. Why doesn't defense
18 counsel sit down so you won't know which way he is coming out,
19 and then we will call you up and he won't know which way you
20 are coming out, so it won't be a question of strategy based on
21 other considerations.

22 MR. HERTZBERG: Like consenting to a magistrate judge.
23 It's a good idea.

24 (Plaintiffs' counsel at sidebar).

25 THE COURT: I do need a yes or no.

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1 (Plaintiffs' counsel confer)

2 THE COURT: Since you are still thinking it through,
3 let me hear from the other side and we will call you back in a
4 minute.

5 (In open court)

6 THE COURT: Defense counsel, do you want to come on
7 up?

8 (Defense counsel at sidebar)

9 THE COURT: So yes or no? So let me say this. The
10 fact that both sides are considering this at some length makes
11 me feel that both sides think the juror is probably on their
12 side. In which case of course one of you is going to be wrong.
13 But I suggest that maybe that means that, naturally enough, you
14 are not in a position to really assess that.

15 Clearly he's been an excellent juror, but this has
16 been a terrific jury, filled with excellent people. But,
17 anyway, I have got to make a determination. So do you agree or
18 disagree?

19 MR. HERTZBERG: The answer is that we do not object to
20 dismissing him. I just want the Court to know why we
21 hesitated, because you really don't know that his case is any
22 different from --

23 THE COURT: I'm sorry?

24 MR. HERTZBERG: You really don't know that his case is
25 any different from any other juror. That's why we hesitated.

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1 THE COURT: You could start something.

2 MR. HERTZBERG: Exactly.

3 THE COURT: I want to question him about what he said
4 to the jurors, if anything, but what I am going to do is, if we
5 excuse him, say that he must not communicate with the other
6 jurors in any way, shape, or form, and then I will tell them on
7 Monday that, for reasons that you may not concern yourself
8 with, I had to excuse him. But I want to make sure that he
9 hasn't yet raised it with them.

10 Why don't you go back. Plaintiffs' counsel was still
11 hemming and hawing, so I am going to call them back now.

12 (Plaintiffs' counsel at sidebar)

13 MR. GLUCK: Our proposal is that the entire jury be
14 given the entirety of Monday off, he be given --

15 THE COURT: I'm not going to do that because then we
16 just get closer and closer to the holidays and we are going to
17 have other jurors beginning to have problems.

18 So as I said outside your presence to defense
19 counsel—who, by the way, I think I can tell you now do not
20 object to it—the reason everyone is hesitating is because you
21 don't know which side he is on. You are not going to know
22 that. But what you do know is this is an exceptional jury and
23 there are a bunch of other very good people on this jury.

24 So anyway, I reject your proposal. So now on the
25 pending question, do you -- and you do now have the knowledge

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1 of the other side's position, but do you object to his being
2 excused?

3 MR. GLUCK: We do object, but we understand the
4 Court's position.

5 THE COURT: Okay.

6 (In open court)

7 THE COURT: There is nothing more fun than being a
8 juror when we have a sidebar.

9 Here is one of the concerns that counsel has raised
10 which is we are sure other jurors are beginning to have time
11 issues because this case went a little bit longer than we
12 thought it would be. To be utterly frank, I thought it would
13 be over today. So did you communicate to the -- any of the
14 jurors that you were going to ask to be excused.

15 JUROR NO. 5: I had mentioned it to Ms. Kotowski
16 before she left the room, that if I needed to be excused, what
17 do I do? And she said you have to write a note and hand it to
18 the judge. Everybody was in the room. I don't know if they
19 heard me, were paying attention.

20 THE COURT: What I am going to do is the following. I
21 am going to excuse you.

22 JUROR NO. 5: Thank you.

23 THE COURT: I am going to direct you very strictly to
24 have no contact with any of the other jurors. We will let you
25 know when the case is over. I am simply going to tell the jury

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1 Monday morning that you had to be excused for reasons they
2 should not speculate about.

3 But thank you for filling us in, and thank you for
4 your service. We are very sorry to lose you. Both sides
5 thought you were a terrific juror. I thought you were a
6 terrific juror. And I don't know why you want to give that up
7 just to make a living.

8 THE DEPUTY CLERK: Plus we are changing caterers on
9 Monday.

10 THE COURT: Anyway, but thank you again and you are
11 excused, so you don't have to show up Monday.

12 JUROR NO. 5: Thank you, your Honor. Thank you,
13 counsel.

14 THE COURT: By the way, the jury, as far as you know,
15 just for my information, is coming back at 9:30 on Monday?

16 JUROR NO. 5: That's correct.

17 THE COURT: Okay. Very good. Thanks a lot.

18 JUROR NO. 5: (Handing).

19 THE DEPUTY CLERK: Oh, thank you. You are just the
20 best. This is the get-in-ahead-of-people card.

21 JUROR NO. 5: Thank you.

22 COUNSEL: Bye.

23 THE DEPUTY CLERK: I will call you after the verdict
24 is in, sir.

25 JUROR NO. 5: Okay. Appreciate it. Thank you.

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1 (Juror No. 5 not present)

2 THE COURT: For the benefit of defense counsel, since
3 they weren't at the sidebar, although this is all part of the
4 transcript, so you can see it anyway, plaintiffs' counsel
5 suggested that the jury as a whole be excused for the entirety
6 of Monday. I rejected that because I thought that was an
7 invitation to further problems with other jurors as we get
8 closer and closer to the holidays. And so after that, I did
9 inform plaintiffs' counsel that you had not objected, and I'm
10 sorry I did. That was a moment of weakness on my part. And
11 they, in any event, for I'm sure independently sufficient
12 reasons in their mind, did object to excusing the juror, but I
13 overruled that, as you heard, and therefore the juror has been
14 excused.

15 All right. So have a very good weekend, and we will
16 see all of you at 9:30 or at least one from each side at 9:30
17 on Monday morning.

18 COUNSEL: Thank you, Judge.

19 (Adjourned to Monday, December 19, 2022, at 9:30 a.m.)

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